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SENATE BILL 2267 By
Fowler

HOUSE BILL 2334
By Wood

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 50, relative to educational records.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 50, is amended by adding Sections 2 through 10 of this act as an appropriately numbered new part.

SECTION 2. The title of this act is, and may be cited as, the "Educational Records as Evidence Act".

SECTION 3. As used in this part, unless the context otherwise requires "Custodian" means and includes the educational record practitioner and the administrator or other chief officer of a public, private, or parochial school in this state and its proprietor, as well as their deputies and assistants, and any other persons who are official custodians or depositories of records.

SECTION 4.

(a) Except as hereinafter provided, when a subpoena duces tecum is served upon a custodian of records of any public, private or parochial school in this state in an action or proceeding in which the school is neither a party nor the place where any

cause of action is alleged to have arisen, and such subpoena requires the production of all or any part of the records of the school or of the school's present or past student, it shall be sufficient compliance therewith if the custodian or other officer of the school within five (5) days after being served with a subpoena duces tecum, shall, either by personal delivery or certified or registered mail, file with the court clerk or the officer, body or tribunal conducting the hearing, a true and correct copy (which may be a copy reproduced on film or other reproducing material by microfilming, photographing, photostating or other approximate process, or a facsimile, exemplification or copy of such reproduction or copy) of all records described in such subpoena.

(b) Any party intending to use the provisions of this section shall furnish the adverse party or the adverse party's attorney a copy of the subpoena duces tecum not less than ten (10) days prior to the date set for the trial of the matter for which the records may be introduced.

SECTION 5. The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness and date of subpoena clearly inscribed thereon. The sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed and directed as follows:

(1) If the subpoena directs attendance in court, to the clerk of such court or to the judge thereof;

(2) If the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at such officer's place of business; and

(3) In other cases, to the officer, body or tribunal conducting the hearing, at a like address.

SECTION 6.

(a) Unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of records shall remain sealed and shall be opened only at the time of trial, deposition or other hearing, upon the direction of the judge, court, officer, body or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at such trial, deposition or hearing. Before directing that such inner envelope or wrapper be opened, the judge, court, officer, body or tribunal shall first ascertain that either:

(1) The records have been subpoenaed at the instance of a student or parent of a student involved or such student is or parent's counsel of record;

(2) The student or parent involved or someone authorized in such student's or parent's behalf to do so for such student or parent has consented thereto and waived any privilege of confidentiality involved; or

(3) The records have been subpoenaed in a criminal proceeding.

Records which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom they were received.

(b)

(1) Upon receipt of a subpoena, the custodian shall send the records to the attorney responsible for the issuance of the subpoena at the place, and on or before the date designated in the subpoena, if such subpoena:

(A) States conspicuously on its face that the records are required in a tort action or domestic relations proceeding in which the student or parent has raised the issue of the student's education level, performance or attendance; and

(B) Directs the custodian's attendance at a deposition.

(2) The attorney responsible for the issuance of the subpoena need not meet the requirements of subsection (a) before opening the sealed records, if the attorney furnishes a copy of the records to the adversary party or their counsel.

SECTION 7.

(a) The records shall be accompanied by an affidavit of a custodian stating in substance:

(1) That the affiant is the duly authorized custodian of the records and has authority to certify the records;

(2) That the copy is a true copy of all the records described in the subpoena;

(3) That the records were prepared by the personnel of the school or persons acting under the school's control in the ordinary course of business at or near the time of the act, condition or event reported therein; and

(4) Certifying the amount of the reasonable charges of the school for furnishing such copies of the record.

(b) If the school has none of the records described, or only part thereof, the custodian shall so state in the affidavit and file the affidavit and such records as are available in the manner described in Sections 4 and 5 of this act.

(c) The filing of such affidavit with respect to reasonable charges shall be sufficient proof of such expense, which shall be taxed as costs of court.

SECTION 8.

(a) The copy of the record shall be admissible in evidence to the same extent as though the original thereof were offered and the custodian had been present and testified to the matters stated in the affidavit.

(b)

(1) The affidavit shall be admissible in evidence and the matters stated therein shall be presumed true in the absence of a preponderance of evidence to the contrary.

(2) When more than one (1) person has knowledge of the facts, more than one (1) affidavit may be made.

SECTION 9.

(a) Where the personal attendance of the custodian is required, the subpoena duces tecum shall contain a clause which reads:

"The procedure authorized pursuant to Section 4 of this act will not be deemed sufficient compliance with this subpoena."

(b) Where both the personal attendance of the custodian and the production of the original record are required, the subpoena duces tecum shall contain a clause which reads:

"Original records are required, and the procedure authorized pursuant to Section 4 of this act will not be deemed sufficient compliance with this subpoena."

(c) Where the personal attendance of the custodian is required, the reasonable cost of attendance and producing the records shall be taxed as costs of court.

SECTION 10.

(a) In view of the property right of the public, private or parochial school in its records, original records may be withdrawn after introduction into evidence and copies substituted, unless otherwise directed for good cause by the court, judge, officer, body or tribunal conducting the hearing.

(b) The custodian may prepare copies of original records in advance of testifying for the purpose of making substitution of the original record, and the reasonable charges for making such copies shall be taxed as costs of court.

(c) If copies are not prepared in advance, they can be made and substituted at any time after introduction of the original record, and the reasonable charges for making such copies shall be taxed as costs of court.

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.